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# In the Supreme Court of the United States

October TERM, 1973

NO. 73-706

In the matter of the Incorporation of Forest Hill, a Municipal Corporation, WALLACE FIELDS, ET AL
(Edward Martin Peusch, Petitioner)

VS.

City of Jackson, Mississippi

Respondent.

*PETITION FOR WRIT OF CERTIORARI TO*

The Supreme Court of Mississippi

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In the matter of the Incorporation of Forest Hill, a Municipal Corporation, WALLACE FIELDS, ET AL

VS.

City of Jackson, Mississippi

Respondent

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

Petitioner, **Edward Martin Puesch,** et al, prays that a Writ of Certiorari issue to review the Judgement and Opinion of The Supreme Court of Mississippi, which opinion was handed down, June 25, 1973 and the petition for rehearing was acted upon and denied on August 10, 1973.

## OPINIONS BELOW

The opinion of the Supreme Court of Mississippi is reported in 280 So 2d 837 and it appears at Appendix A in this petition. The Petition for Rehearing was denied August

10, 1973, and appears in the appendix at pages A6. The order denying the Petition for Rehearing appears in the appendix commencing at page A9. The order of the Chancery Court of the First Judicial District of Hinds County Mississippi is shown in the Appendix at pages A9-A10. The motion to consolidate and the order consolidating the causes of action are shown in the Appendix at pages A11, A15. (Sections 3374-19, 3374-03 and 3374-10 of the Mississippi Code annotated 1942 are shown at pages A15, A16 and A17 in the Appendix.)

## JURISDICTION

The Opinion and Affirmation of the Supreme Court of Mississippi was rendered June 25, 1973 and the Petition for Rehearing was denied August 10, 1973. The petition for Rehearing and the order overruling the petition for rehearing are shown in the Appendix of this brief at pages A6, A9.

The Petition for Certiorara was filed less than 90 days from the date aforesaid.

The Jurisdiction of the Court is invoked under 29 U. S. C. 1257 (3).

## QUESTIONS PRESENTED

The questions presented in this petition are:

1. Whether the action of the Supreme Court of Mississippi in affirming the ruling of the Chancery Court of the First Judicial District of Hinds County Mississippi, in consolidating the Petitioners' Incorporation proceedings

with Respondent's annexation proceedings, is consistent with the Due Process Clause of the Fourteenth amendment of the Constitution of the United States.

2. Whether Section 3374-10 of the Mississippi Code Annotated 1942 violates the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

3. Was the action of the City of Jackson in passing a City ordinance of annexation including the identical geographical area as was identified in the Petitioners' Petition for Incorporation so arbitrary and capricious as to amount to a denial of Due process under the Fourteenth Amendment of the Constitution of the United States?

## CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fourteenth Amendment of the Constitution of the United States.

2. Section 3374-03, 3374-10 and 3374-19 of the Mississippi Code Annotated 1942.

## STATEMENT OF THE CASE

Petitioners, proceeding under the provisions of Section 3374-03, et seq. of the Mississippi Code of 1942 which requires a petition signed by two-thirds of the *qualified electors* of the territory to be incorporated, on the 17th day of February, 1970, filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi, their petition for the creation of a municipal corporation to be known as "The City of Forest Hill."

The City Council of Jackson, Mississippi on February 24th, 1970, the day following the service of process in the incorporation case of Petitioners, adopted an ordinance attempting to extend the corporate limits and boundaries of the City of Jackson so as to include the *identical territory* sought to be incorporated by Petitioners in their petition of February 17, 1970. The Council acted pursuant to Section 3374-10 of the Mississippi Code Annotated 1942 which *does not* require the vote or consent of any of the *qualified electors* or inhabitants of the annexed territory.

On the 16th day of March, 1970, the City filed its petition for ratification and approval of the said ordinance in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

On April 2nd, 1970, the City of Jackson filed its motion to *consolidate* its annexation case with the matter of *incorporation* of Forest Hill.

On April 3rd, 1970, the Petitioners in the matter of incorporation of Forest Hill, filed their response to this *motion to consolidate* setting forth their objections thereto.

The Court on the 16th of June, 1970, entered its order *consolidating* the *incorporation petition* with the petition for the *annexation* of territory filed by the City of Jackson over the strong objections of the Petitioners.

The trial commenced on the consolidated cases and was in progress for approximately thirteen weeks. The testimony of over 100 witnesses were heard and the record is voluminous. The hearing was completed on April 21, 1971.

On September 15, 1970, the Council of the City of Jackson adopted another expansion ordinance, completely ignoring its Forest Hill annexation ordinance, expanding the corporate limits of the City northerly to the Madison County line and filed its petition for confirmation with the Chancery Court of the First Judicial District of Hinds County, Mississippi, which approved the said ordinance and on appeal was affirmed by the Supreme Court in *Sperry-Rand, et al v. City of Jackson, 248 So. 2d. 810,* and therefore completely abandoned its effort to annex the area.

On August 12, 1971 the Chancellor dismissed the Petitioners Petition to Incorporate and the City's petition to annex.

From the decision of the Chancellor the Petitioners appealed to the Supreme Court of Mississippi.

By opinion date June 25, 1973, the Supreme Court of Mississippi affirmed the Chancellor's actions.

The Supreme Court decided that the action of the trial court in assuming jurisdiction of the *annexation proceedings* of the City and *consolidating* them with the Petitioners Incorporation proceedings was an undue burden placed upon the Petitioners causing them to not only prove the reasonableness of the incorporation pursuant to the statutory requirements (S 3374-03, et seq., Miss. Code 1942. 1956), but also burdened them with refuting the reasonableness of the city's annexation proceedings, thereby confusing the issue by combining

causes of action which were the antithesis of each other.

*The Supreme Court concluded, "that the petition of the citizens of the community of Forest Hill to incorporate having been first filed should have been heard on the reasonableness of the incorporation uncluttered by the city's annexaction proceeding."*

Although the Supreme Court decided that the actions of the Chancellor in assuming jurisdiction of the City's Annexation Proceedings and Consolidating the same with Petitioners Incorporation Proceedings was error, the court determined that it was not error of constitutional proportions, i.e. not violative of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Further the Court in making its determinations necessarily had to construe Sections 3374-03 and 3374-10 of the Mississippi Code Annotated 1942, and therefore *Sub Silentio* determined the Statues to be constitutional.

## REASONS FOR GRANTING THE WRIT

### I

The Decision of the Supreme Court of Mississippi directly conflicts with the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States.

Petitioners sought incorporation of Forest Hill under and by virtue of Section 3374-03 Mississippi Code Ann. 1942. Under this Section Petitioners had the burden of proving to the Chancery Court that the incorporation of Forest Hill was reasonable and that the public convenience

and necessity require the incorporation. The city sought to extend its boundaries pursuant to Section 3374-10 of the Mississippi Code Annotated 1942, which requires the city to prove that the extention or annexation is reasonable and is required by public convenience and necessity.

Therefore, the Petitioners in order to prove their petition, had to prove that incorporation of Forest Hill was reasonable and required by public convenience and necessity. As a result of the actions of the court in assuming jurisdiction of the City's Annexation Petition and consolidating it with the Petitioners incorporation petition, which was filed prior to the annexation petition, the Petitioners were placed in a position where it was necessary to prove a cause of action and a defense which were the *antithesis* of each other. Petitioners were forced to assume the undue and unconstitutional burden of "Defending and Prosecuting" themselves in the same case. This action by the Supreme Court of Mississippi denied them Due Process.

A fundamental requirement of Due Process is "the opportunity to be heard" *Grannis V. Ordean* 234 U. S. 385,394. It is an opportunity which *must* be granted at a meaningful time and in a meaningful manner. *Armstrong V. Manzo* 380 US 545,552. We acknowledge the authority to consolidate but, "In so doing it (may not) offend (S) some principal of justice so rooted in the traditions and consciences of our people as to be ranked as fundamental." *Snyder V. Massachuesetts* 291 US 97, 105.

The Supreme Court of Mississippi in its ruling acknowledged that it was unfair for the Petitioners to have the case consolidated, but, reasoned that the lower Court was just. This reasoning cannot square or comport with the Due Process Clause. The cases are legion that "the requirement of Due Process is not satisfied if the hearing was unfair, though the end might be just", *State V. Clow* 10 NW (2d) 359.

The actions of the Court required the petitioners to prove their case and at the same time nulify their defense. As this court has previously announced:

"To experienced lawyers it is commonplace that the outcome of a lawsuit--and hence the vindication of legal rights--depends more often on how the factfinder appraises the facts than on a disputed construction of a statute or interpretation of a line of precedents. Thus the procedures by which the facts of the case are determined assume an importance fully as great as the validity of the substantive rule of law to be applied. And the more important the rights at stake the more important must be the procedural safeguards surrounding those rights". *Speiser V. Randall* 357 US 513,521.

Because of the consolidation, the Petitioners, while carrying their burden of proving the reasonableness and public convenience and necessity for incorporation, were also carrying the undue burden which rightfully should have been carried by the City in their annexation proceedings.

This shouldering of burdens violates the Clear mandate of this Court in *Speiser* supra.

The actions of the Courts denied to the petitioners a meaningful hearing as contemplated by the Due Process Clause, but in fact furnished them with a hearing which in law amounted to no hearing at all.

The Supreme Court of Mississippi found that the so-called hearing confused the issue and the combining of the causes of action which were the antithesis of each other denied the Petitioners the right to have their incorporation hearing heard uncluttered by the annexation proceedings; but, having so found the court erroneously decided that the petitioners had not been denied Due Process.

We submit to this court that the actions of the Chancellors in consolidating the cause and the affirmation of such action by the Supreme Court of Mississippi was a Judicial Denial of these Petitioners, right to a Due Process hearing, *Brinkerhoff-Farris Trust & Savings Company V. Hill* 281 US 673.

II

Section 3374-10 of the Mississippi Code Annotated 1942 violates the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States.

Section 3374-03 of the Mississippi Code Annotated requires the *vote by petition* of two-thirds of the *qualified electors* residing in a territory to be incorporated.

Section 3374-19 provides for a *vote by petition* of two-thirds of the *qualified electors* to be included or

excluded from certain territory adjacent to or residing in the corporate limits of a municipality.

Section 3374-10 of the Mississippi Code Annotated 1942, was the basis for the City's annexation ordinance. This Section denies the right to the *qualified electors to vote by petition or otherwise* and therefore denies Equal Protection as quaranteed by the Constitution.

The traditional standard of review under the Equal Protection Clause of the Fourteenth Amendment is to examine whether the objective the state seeks to further by classification is legitimate and, if so, whether the classification bears a rational relation to the objective. *E.G. McGowan v. Maryland*, 366 U. S. 420, 425 (1961). In cases involving the abridgement or deprivation of rights classified as "fundamental" the Supreme Court has adopted a more stringent standard of review: the compelling state interest standard. Succinctly stated, the compelling state interest standard is "whether the exclusion is necessary to promote a compelling state need". Thus, the Supreme Court has held to be "fundamental" the constitutional right to vote, *Kramer v. Union Free School District*, 395 U.S. 620 (1969). The deprivation of this fundamental right must be justified by a compelling state interest.

In a free society and in this Republican form of government no right is more fundamental than the right to vote and to participate in the political process including annexation and/or incorporation of a new municipality. In 1886, the Supreme Court referred to "the political franchise of voting" as a "fundamental political right, because preservative of all rights." *Yick Wo v. Hopkins*, 118 U. S. 356, 379, (1886). *In Reynolds Sims*, 377 U.S.

533, 561-2 (1963) the Supreme Court stated:

> "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpared manner is preservative of other basic civil and political rights, any alleged infringement of the rights of citizens to vote must be fully and meticulously scrutinized".

The Supreme Court has clearly and unequivocably enunciated the principle that a denial of the fundamental right to vote by a state must by subjected to the compelling state interest test.

> If a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest. *Kramer v. Union Free School District,* 395 U.S. 621, 627 (1969).

In a case decided the same day as *Kramer,* the Supreme Court held that a Louisiana statute limiting the franchise in a bond election to property tax holders violated the equal protection clause of the Fourteenth Amendment, applying the *Kramer* compelling interest equal protection standard of review. *Cipriano v. City of Houma,* 395 U. S. 701, 704 (1969).

In *Evans v. Corman,* 398 U.S. 419, 422 (1970): the

court stated:

> "Before that right (to vote) can be restricted, the purpose of the restriction and the assertly overriding interest served by it must meet close constitutional scrutiny."

And in City of *Phoenix v. Koldziejski*, 399 U. S. 204, 209 (1970) in holding that state constitutional and statutory provisions excluding non-property owners from voting in elections for the approval of the issuance of general obligation bonds violated the equal protection clause of the Fourteenth Amendment, the Court applied test of whether to justify such an exclusion there was a "overriding interest . . . which the State is entitled to recognize."

This is also the teachings of *Dunn v. Blumstein*, 405 U. S. 330 (1972).

Section 3374-10 of the Mississippi Code Annotated 1942 *excluded* from the *right to vote* all persons otherwise qualified to vote who live in territory sought to be annexed by a municipality. Under the foregoing authorities, therefore, to be constitutional, this exclusion must be justified by a compelling state interest.

Petitioners submit that the State of Mississippi has no compelling state interest in denying these qualified voters the right to vote. Petitioners assert first that the burden of proof is upon the State to show that there is such a compelling state interest; second, that the statutory provisions of Section 3374-10 amply demonstrates that there is no such compelling state interest.

The State has by this Section created an

unconstitutional classification as to their qualified voters and residents living in the territory sought to be annexed by denying them the same right to vote by petition granted to incorporators or residents voting by petition to be included or excluded from an existing municipality. This Court has addresses its self to simular classification which classification was less onerous in the case of *Reynolds v. Sims* 377 U.S. 533.

"To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighing or diluting the efficacy of his vote. The complexions of societies and civilizations change, often with amazing rapidity. A nation once primarily rural in character becomes predominantly urban. Representation schemes once fair and equitable become archaic and outdated. But the basic principle of representative government remains, and must remain, unchanged--the weight of a citizen's vote cannot be made to depend on where he lives. Population is, of necessity, the starting point for consideration and the controlling criterion for judgement in legislative apportionment controversies. A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause. This is an essential part of the concept of a government of laws and not men. This is at the heart of Lincoln's vision of government of the people, by the people, and for the people. The Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races."

The Annexation Proceedings should not have been

considered and construed by the Court since it was based upon an unconstitutional statute.

There is no reasoning within the meaning of Democracy which can justify the denial of the right to vote upon a government which controls citizens daily activities and extracts from the electoral taxes without their approval or consent. This violates every known concept of a true Democracy and is repugnant to the Constitution of Mississippi and the United States of America.

III

The actions of the City in adopting an Annexation Ordinance under the circumstances were arbitrary, capricious and discriminatory and violative of the Fourteenth Amendment.

The day after service of Process by the court on the Petition of the Petitioners, the City Council adopted an ordinance annexing the *Identical Territory.* This action is of itself relects that the ordinance was adopted for the sole purpose of thwarting the Petitioners right to incorporate.

This was amplified by the fact that within a short time after filing their petition with the court to annex the identical territory, they filed a motion to consolidate. The City was well aware that if the *court* allowed the consolidation then the Petitioners for Incorporation would be placed in the untenable posture of having to prove their case and at the same time defend the City Proceedings which would place Petitioners for annexation in inconsistent positions. It is beyond cavil that this was the intent of the City, and, therefore its action in adopting the ordinance annexing the identical territory was arbitrary,

capricious, discriminatory and violative of the Fourteenth Amendment to the Constitution of the United States. This is further indicated by the fact that the city later adopted another annecation ordinance wherein the territory included in your Petitioners Petition for incorporation was eliminated. This points up the fact that the city competed in a foot race with your Petitioners to the Court House and although loosing the race and coming in second they won the prize, by denying your Petitioners their right to a fair and meaningful hearing, unemcumbered by intentional confusion and intentional deprivation of Due Process.

Such actions of intentional legal confusion at the expense of the citizens of the City as well as the trampling of the Constitutional rights of the Petitioners is unparralled in modern day society. Such actions are unbecoming of a City administration sworn to uphold the rights of the citizens and elected by a Democratic society.

The adoption of the Annexation Ordinance was so unreasonable as to become an infringement upon the rights of your Petitioners. *Chicage, R.I. & Pr. Co. v. United States* 284 U.S . 80. This court has on numerous occasions said that when a municipality adopts an ordinance under state authority such constitutes State action and must comport with the Constitution of the United States, *Lovell v. City of Griffin*, 303 U.S. 444.

## CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgement and Opinion of the Supreme Court of Mississippi.

Respectfully submitted,

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**JOHN ARTHUR EAVES**
Attorney for Petitioners

**IN THE SUPREME COURT OF MISSISSIPPI**

**NO. 47,448**

**IN THE MATTER OF THE INCORPORATION OF FOREST HILL, A MUNICIPAL CORPORATION, WALLACE FIELDS, ET AL**

**V.**

**CITY OF JACKSON**

**PATTERSON, JUSTICE:**

An area approximately twelve square miles abutting the western boundary of the city of Jackson is the object of contention between the city and the community of Forest Hill. The appellants sought to incorporate this area into a municipality to be known as the City of Forest Hill. The City of Jackson, the appellee, sought to expand its limits by annexing the area to the city. After hearing many witnesses in the causes which had been consolidated for trial, examining exhibits, and the arguments of counsel, the Chancery Court of the First judicial District of Hinds County dismissed the city's petition to annex the area as well as the petition to incorporate. From this decree the prospective incorporators appeal.

They contend the trial court erred in assuming jurisdiction of the annexation proceedings and consolidating them with those of incorporation, erred in not dismissing the annexation proceedings after it became apparent the city of Jackson had abandoned its intensions

to annex the Forest Hill area and *erred in finding the proposed incorporation of Forest Hill not to be reasonable. We affirm.*

The argument directed to the action of the trial court in assuming jurisdiction of the annexation proceedings and consolidating them with the incorporation proceedings is that an undue burden was placed upon the would-be incorporators causing them to not only prove the reasonableness of the incorporation *pursuant to the statutory requirements* [*3374-03, et seq., Miss. Code 1942 Ann.* [*1956*], but also burdened them with refuting the reasonableness of the city's annexation proceedings, thereby confusing the issue by combining causes of action which were the antitheses of each other. This argument, in our opinion, is technically well founded in view of what was stated by this Court in *City of Jackson v. Whiting*, 84 Miss. 164, 185, 186, 36 So. 611 (1904), which was also an annexation versus incorporation case. There we stated:

> It is our conclusion that in determining whether an ordinance extending the limits of a municipality be or be not reasonable, the action of the board of mayor and aldermen must be considered solely in the light of the conditions which confronted it at the time the ordinance was adopted, and the reasonableness or validity of the ordinance would in no wise be affected by any action which might be taken by others subsequent to its passage. So in the instant case the action of the board of mayor and aldermen of the city of Jackson must be judged from the point of view which they occupied at the time the ordinance extending the limits was adopted, and when the cause is submitted to a jury the testimony as to the reasonableness of the ordinance must be confined to the circumstances existing at the time of its enactment. if, therefore, on the 23d of July, 1903, when the ordinance was adopted, it did in fact only embrace "adjacent unincorporated territory" within legal contemplation, the fact that any part of the territory so embraced subsequently procured a

> chapter of incorporation, though in a strictly legal manner, would in no wise affect or bear upon the question of the reasonableness of the proposed extension. . . . As bearing on this it is, of course, a question of vital and decisive importance whether or not at that date the citizens resident in the territory subsequently incorporated as the village of Duttoville had taken any legal initiatory step necessary to the incorporation which they subsequently obtained. If, as a matter of fact, it should appear that prior to the passage of the ordinance by the board of mayor and aldermen of the city of Jackson the inhabitants step required by law . . . then the subsequent action of the board of mayor and aldermen could not deprive them of the rights which they had thus acquired under the terms of the law. If, on the contrary, it should appear that this action on the part of the citizens of Duttoville in posting the notices was subsequent to the adoption of the ordinance by the city of Jackson, then they gain nothing by such action, and their subsequent incorporation was ineffective, provided the jury should decide, without regard to this, that the ordinance was otherwise reasonable. . . .

This case appears to be in accord with the majority rule of the remainder of the states, a typical expression of the rule being found in *City of Daytona Beach v. City of Port Orange*, 165 So.2d 768, 771 (Fla. 1964), in this language:

> The doctrine of "prior jurisdiction" also supports the decree appealed. Where two inconsistent petitions involving the same territory are pending, it is proper to decline to consider the later one until there is a disposition of the earlier one. It is held that where a petition for incorporation of territory into a new municipality was filed and pending before the institution of annexation proceedings involving the same territory, such annexation proceedings may not be taken until disposition of the proceedings seeking incorporation.

*We conclude that the petition of the citizens of the community of Forest Hill to incorporate having been first*

*filed should have been heard on the reasonableness of the incorporation uncluttered by the annexation proceeding.* The greater question, however, is whether the concolidation of the two causes constituted an error of such proportion that the cause should be reversed. Under the statutes appertaining to either incorporation or annexation the issue basic to each is whether it is reasonable and required by public convenience and necessity. Though in our opinion the petitions were improperly consolidated, nevertheless the trial court's opinion conclusively indicates that it was formulated from the evidence before it with *the statutory issues clearly in mind.* We therefore are of the opinion the consolidation, under the circumstances before us, was not prejudicial error.

While this case was in the course of trial, the appellee adopted an ordinance for the extension of the boundary of the city of Jackson northerly to the MAdison County line. This ordinance made no mention of the previous ordinance relating to the extension of the city boundary into the Forest Hill area. It is contended that the later ordinance was so completely repuguant to the former that it effectively repealed the prior ordinance.

This argument overlooks the fact that the annexation proceeding by the city for the Forest Hill area was dismissed, leaving the question of the validity or invalidity of the ordinance immaterial since there was no cross appeal. In this posture of the case we conclude this argument to be without merit.

The greater and overall question before the Court is whether the trial court was manifestly wrong in finding the evidence in support of the petition to incorporate to be unreasonable under the circumstances. As mentioned,

there were numerous witnesses who testified on both side of the issue. The trial court, whose duty it was to resolve the conflict, found the evidence of the prospective incorporators to be insufficient of the prospective incorporators to be insufficient to meet the statutory requirements ". . . *is reasonable and is required by the public convenience and necessity.*" ( 3374-13, Miss. Code 1942 Ann. (1956), and surely we cannot say it was manifestly wrong. *See* Rouse v. City of Pascagoula, 230 So.2d 543 (Miss. 1970). Compare the recent case of Incorporation of the City of Pearl, Mississippi, I . D. Boling and John Mohr v. The City of Jackson, et al., No. 47,488, decided June 5, 1973, *wherein under an entirely different factual situation an opposite result was reached.*

**AFFIRMED.**

**RODGERS, P. J., INZER, ROBERTSON**

**AND WALKER, JJ., CONCUR.**

**IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI**

NO. 47,448

IN THE MATTER OF THE INCORPORATION
OF FOREST HILL, A MUNICIPAL CORPORATION:
WALLACE FIELDS, ET AL APPELLANTS

VERSUS

CITY OF JACKSON, MISSISSIPPI APPELLEE

*PETITION FOR REHEARING*

Come now Wallace Fields and others, petitioners for the incorporation of a municipality to be known as Forest Hill, appellants in the above styled and numbered cause, by their attorney lawfully authorized thereunto, and respectfully petition this Honorable Court for a rehearing of its decision rendered herein on June 25, 1973, and in support thereof, would respectfully show unto the Court the following:

I.

This court erred in holding that the error of the trial court in assuming jurisdiction of the annexation proceedings and consolidating them with the incorporation proceedings was not prejudicial error.

II.

This Court, in holding that the trial court did not err in overruling appellants' motion to dismiss the Forest Hill annexation proceeding of the City of Jackson extending its boundary northerly to the Madison County line was repugnant to and effectively repealed the Forest Hill annexation ordinance, did itself err in concluding that the appellants' argument was without merit.

III.

This court erred in holding that the trial court found the petiton to incorporate Forest Hill to be unreasonable.

Very respectfully submitted,

**WALLACE FIELDS, ET AL, APPELLANTS**

**BY:**_____

**E.W. STENNETT, THEIR ATTORNEY**

**CERTIFICATE OF SERVICE**

I, the undersigned of counsel for the appellants, hereby certify that I have this day delivered a true copy of the above and foregoing Petition for Rehearing to the

Honorable John E. Stone and the Honorable L. Arnold Pyle, attorneys of record for the appellee in the above styled cause on this, the 5th day of July, 1973.

OF COUNSEL

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**IN THE SUPREME COURT OF MISSISSIPPI**

**AUGUST 10, 1973**

In The Matter of The Incorporation
Forest Hill: Wallace Fields, et al

vs. 47,448

City of Jackson

This cause this day came on to be heard on the petition for a rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied both order and adjudge that said petition be and the same is hereby denied.

**MUNITE BOOK "BQ" PAGE 242**

**BOOK 354 - PAGE 376**

**IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

**IN THE MATTER OF THE INCORPORATION**
**OF FOREST HILL, a Municipal Corporation No. 79,101**

## FINAL ORDER DISMISSING PETITION FOR INCORPORATION OF FOREST HILL

This cause coming on for consideration on Petition of Wallace Fields, et al., for the incorporation of the area described in said petition situated in the First Judicial District of Hinds County, Mississippi as Forest Hill, a Municipal Corporation, the protest and objections of the City of Jackson, Mississippi, a municipality, and the court having heard and considered all testimony and evidence presented by the proponents of said petition as well as the testimony and evidence submitted by the protestant, City of Jackson, against their petition for incorporation, and having examined briefs and heard arguments of counsel and having heretofore made its Findings of Fact and Conclusions of l aw, which is made a part thereof by reference, the Court is of the opinion and so finds that the said Petition for Incorporation of Forest Hill is not reasonable and that the same should be finally dismissed.

**IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED** by the Court that the Petition of Wallace Fields, et al., for the incorporation of the area generally referred to as Forest Hill, to be incorporated as a municipality be and the same is hereby finally dismissed at the cost of the petitioners, for which execution may issue.

**ORDERED, ADJUDGED AND DECREED** this, the 12th day of August, 1971.

/s/ Geo. W,. Haynes
**CHANCELLOR**

Filed
Aug 12 - 1971
Tom Virden,
Chancery Clerk
By /s/ Mary G. Beane, D. C.

**IN THE CHANCERY COURT OF THE FIRST JUDICAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

**IN THE MATTER OF THE INCORPORATION OF FOREST HILL, A MUNICIPAL CORPORATION**

**NO. 79,101**

**CITY OF JACKSON, MISSISSIPPI, ET AL DEFENDANTS**

## MOTION TO CONSOLIDATE

Comes the respondent, City of Jackson, Mississippi, a municipality duly and legally incorporated under and by virtue of the laws of the State of Mississippi, which municipality is within three miles of the area sough to be incorporated in the Petition of Incorporation filed in the above numbered cause in this Court, by and through its duly authorized attorney's and moves the Court to consolidate this cause with Cause No. 79,320 upon the Docket of this Court, styled "In the Matter of the Extension of the Boundaries of the City of Jackson, Mississippi", and for grounds of said motion says:

1. The territory sought to be incorporated into a municipality to be known as "Forest Hill", pursuant to the Petition in said Cause No. 79,101, is identically the same territory described in the Ordinance of the City of Jackson and covered in the Petition for Approval by this Court in said Cause No. 79,320.

2. That the primary question to be determined by this Court following a hearing upon the merits of the petitions before the Court in said causes, to-wit:

> "Whether or not the prayer of the respective petitions is reasonable and is required by the public convenience and necessity"

in each case is identical as set forth in Sections 3374-04 and 3374-20, Mississippi Code of 1942, Recompiled.

3. The evidence to support or refute each petition will be substantially the same.

4. And other good and sufficient reasons to be presented upon the hearing of this motion.

Respectfully submitted,

**CITY OF JACKSON, MISSISSIPPI**

By /s/ John E. Stone

**JOHN E. STONE,**
**City Attorney**

and

**WATKINS, PYLE, LUDLAM, WINTER and STENNIS**

By /s/ L. Arnold Pyle

Solicitors for Defendants

## CERTIFICATE OF SERVICE

I, L. Arnold Pyle, one of the Attorneys of Record for the defendant, City of Jackson, Mississippi, in the above entitled and numbered cause, do hereby certify that I have this day personally delivered to Honorable E. W. Stennett, Attorney of Record for petitioners, a true and correct copy of the above and foregoing Motion to Consolidate.

This, the 2nd day of April, 1970.

/s/ L. ARNOLD PYLE
L. Arnold Pyle

Filed
Apr 2 - 1970
Tom Virden,
Chancery Clerk
By /s/ Ellen Bicker, D. C.

BOOK 332 - PAGE 477

**IN THE CHANCERY CLERK OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI**

**IN THE MATTER OF THE INCORPORATION OF FOREST HILL, A MUNICIPAL CORPORATION**

**NO. 79,101**

**CITY OF JACKSON, MISSISSIPPI, ET AL DEFENDANTS**

**and**

**IN THE MATTER OF THE EXTENSION OF THE BOUNDARIES OF THE CITY OF JACKSON, MISSISSIPPI** **NO. 79,320**

**ORDER CONSOLIDATING CAUSES FOR HEARING**

There came on for hearing the Motion of the City of Jackson, Mississippi to consolidate the above entitled and numbered causes for hearing on the merits, and the Court having heard argument of counsel representing all parties, and being fully advised in the premises is of the opinion that said motion should be and the same is hereby sustained.

**IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED** by the Court that the above entitled and

numbered causes be and they are hereby consolidated for trial on the merits and said trial shall commence on Monday, June 29, 1970.

**ORDERED, ADJUDGED AND DECREED** this, the 16th day of June, 1970.

/s/ Geo. Wm. Haynes
**CHANCELLOR**

Filed
Jun 16 - 1970
Tom Virden,
Chancery Clerk
By /s/ Ruth May, D. C.

**§ 3374-03. Method of incorporation.**

Whenever the inhabitants of any unincorporated territory shall desire to incorporate such territory as a city or town, they shall prepare a petition and file same in the chancery court of the county in which such territory is located or, if the territory is located in more than one county, the chancery court of either county. Said petition shall meet the following requirements:

(1) It shall describe accurately the metes and bounds of the territory proposed to be incorporated and there shall be attached to such petition a map or plat of the boundaries of the proposed municipality.

(2) It shall set forth the corporate name which is desired.

(3) It shall be signed by at least two-thirds of the qualified electors residing in the territory proposed to be incorporated.

(4) It shall set forth the number of inhabitants of such territory.

(5) It shall set forth the assessed valuation of the real property in such territory according to the latest available assessments thereof.

(6) It shall state the aims of the petitioners in seeking said incorporation, and shall set forth the municipal and public services which said municipal corporation proposes to render and the reasons why the public convenience and necessity would be served by the creation of such municipal corporation.

(7) It shall contain a statement of the names of the persons the petitioners desire appointed as officers of such municipality.

(8) It shall be sworn to by one or more of the petitioners.

When such a petition shall be filed, it shall be docketed as are other suits and causes in the chancery courts of this state. (Supersedes 3393, 3395, Code of 1942.)

## § 3374-10. Extension or contraction of corporate boundaries.

The limits and boundaries of existing cities, towns and villages shall remain as now established until altered in the manner hereinafter provided. When any municipality shall desire to enlarge or contract the boundaries thereof by adding thereto adjacent unincorporated territory or excluding therefrom any part of the incorporated territory of such municipality, the governing authorities of such municipality shall pass an ordinance defining with certainty the territory which it is proposed to include in or exclude from the corporate limits, and also defining the entire boundary as from the corporate limits, and also defining the entire boundary as changed. In the event the municipality desires to enlarge such boundaries, such ordinance shall in general terms describe the proposed improvements to be made in the annexed territory and the manner and extent of such improvements and the approximate time within which such improvements are to be made, and such ordinance shall also contain a statement of the municipal or public services which such municipality proposes to render in such annexed territory. In the event the

municipality shall desire to contract it boundaries, such ordinance shall contain a statement of the reasons for such contraction and a statement showing whereby the public convenience and necessity would be served thereby.

## § 3374-19. Electors may initiate proceedings to be included or excluded.

The qualified electors of any territory contiguous to and adjoining any existing municipality and the qualified electors of any territory which is a part of an existing municipality may be included in or excluded from such municipality, as the case may be, in the manner hereinafter, provided. Whenever the inhabitants of any incorporated territory adjacent to any municipality shall desire to be included therein, and whenever the inhabitants of any territory which is a part of an existing municipality shall desire to be excluded therefrom, they shall prepare a petition and file same in the chancery court of the county in which such municipality is located, which said petition shall be signed by at least two-thirds of the qualified electors residing in the territory proposed to be included in or excluded from such municipality, shall describe accurately the metes and bounds of the territory proposed to be included in or excluded from such municipality, shall set forth the reasons why the public convenience and necessity would be served by such territory being included in or excluded from such municipality, as the case may be, and shall be sworn to by one or more of the petitioners. In all cases, there shall be attached to such petition a plat of the municipal boundaries as same will exist in the event the territory in question is included in or excluded from such municipality. No territory may be excluded from a municipality under the provisions of this act within two years from the time that such territory was incorporated into such municipality, and no territory may be so excluded if it would wholly separate any territory not so excluded from the remainder of the municipality. 'no petition for the inclusion or exclusion of any territory under this section shall be filed within two years from the date of any adverse determination of any proceedings originated under this act for the inclusion or exclusion of the same territory.

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NO. 73-706

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MICHAEL RODAK, JR., CLERK

# IN THE SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1973

IN THE MATTER OF THE INCORPORATION OF FOREST HILL, A MUNICIPAL CORPORATION, WALLACE FIELDS, ET AL
(Edward Martin Peusch, Petitioner)

Vs.

CITY OF JACKSON, MISSISSIPPI .....Respondent

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

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# IN THE SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1973

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## NO. 73-706

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IN THE MATTER OF THE INCORPORATION OF FOREST HILL, A MUNICIPAL CORPORATION, WALLACE FIELDS, ET AL
(Edward Martin Peusch, Petitioner)

Vs.

CITY OF JACKSON, MISSISSIPPI ..... Respondent

---

## BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

---

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

### STATEMENT OF THE CASE

The decision of the Mississippi State Supreme Court, which the petitioners request this Court to review, is one involving a routine municipal incorporation case. At a time when the City of Jackson, Mississippi had under study and had made a public announcement to the effect that it was going to adopt an ordinance pursuant to the statutes of the State of Mississippi to annex certain territory immediately adjacent to the city limits, the petitioner, and others, circulated a petition for the incorporation, into a new city, of a portion of the territory which

the City of Jackson had announced it would undertake to annex. The Petition for Incorporation was filed in the state court one week prior to the date the City of Jackson was able to file its Petition for the approval and ratification of its ordinance annexing the same territory to the City of Jackson. The City of Jackson immediately filed its protest to the Incorporation Petition on the grounds that the petition did not have the signatures of at least two-thirds of the qualified electors residing in the area sought to be incorporated, as required by statute; and, on the further ground, that it was not economically feasible to incorporate the area into a new city, since it was almost exclusively a bedroom community with limited assessed valuation of property which was insufficient to produce the necessary revenues to furnish municipal services to the people residing in the area. Therefore, the City of Jackson alleged, and subsequently proved, that the Petition for Incorporation was unreasonable within the meaning of the statutes of the State of Mississippi and the decisions of the Supreme Court of the State of Mississippi.

The City of Jackson in its Petition for Annexation of the territory in question alleged that it was in a much better position to economically furnish municipal services and other benefits to the residents of the area.

The trial court, as a discretionary matter, consolidated the two cases for trial, and after a lengthy hearing rendered its opinion with extended findings of fact and conclusions of law stating that both petitions should be denied. The petitioner, and others, residing in the area in question, perfected an appeal from the decree of the trial court, denying the Petition for Incorporation, to the Supreme Court of Mississippi. The Supreme Court of Mississippi affirmed the trial court's decision on June

25, 1973 and denied rehearing on August 10, 1973. *Fields v. City of Jackson,* 280 So. 2d 837 (Miss. 1973). The petitioner, one of the residents of the Forest Hill area, after having lost three times in state court now brings this petition to the United States Supreme Court for a writ of certiorari to the Supreme Court of Mississippi.

## JURISDICTION

## I

## PETITIONER'S BRIEF FAILS TO STATE A SUBSTANTIAL FEDERAL QUESTION.

The petitioner's position can be summarized into the following: That he has been denied due process of Law by the Mississippi Supreme Court decision sub judice in two respects, one, the trial court wrongfully consolidated, for the purposes of trial, the Forest Hill Incorporation petition with the City of Jackson's Annexation petition; and, two, the State of Mississippi's statutes for enlarging municipal boundaries are unconstitutional.

While the petitioner alleges that he has been denied due process rights guaranteed by the Fourteenth Amendment to the United States Constitution in order to meet the requirements of 28 U.S.C.A. § 1257 (3), he fails to state a substantial federal question as required by Rule 19.1 (a) of the Rules of the Supreme Court of the United States.

*A. The Petitioner's allegation, that the trial court wrongfully consolidated the Incorporation proceedings with the Annexation proceedings for the trial, is not a substantial federal question; it is merely a routine state procedural question.*

The Mississippi Supreme Court carefully considered this point and determined after a complete review of

the entire record that the chancellor did not commit prejudicial error in consolidating the two proceedings for trial. *Fields v. City of Jackson*, 287 So. 2d 837 (Miss. 1973) (Appendix A1 through A5 of petitioner's brief). The specific language of the Mississippi Supreme Court in regard to this point is found at 280 So. 2d at 838-839 as follows:

> [1] We conclude that the petition of the citizens of the community of Forest Hill to incorporate having been first filed should have been heard on the reasonableness of the incorporation uncluttered by the annexation proceeding. The greater question, however, is whether the consolidation of the two causes constituted an error of such proportion that the cause should be reversed. Under the statutes appertaining to either incorporation or annexation the issue basic to each is whether it is reasonable and required by public convenience and necessity. Though in our opinion the petitions were improperly consolidated, nevertheless the trial court's opinion conclusively indicates that it was formulated from the evidence before it with the statutory issues clearly in mind. *We therefore are of the opinion the consolidation, under the circumstances before us, was not prejudicial error.* [Emphasis added]

The trial court's determination that the cases should be consolidated for trial was a decision regarding state practices and procedure. The Mississippi Supreme Court reviewed the record in its entirety and determined that, while the trial court erred in consolidating the two causes, there was no prejudicial effect because the basic issue of each proceeding was the same; and, the trial court's opinion indicated that its decision was made "from the evidence before it with the statutory issues

clearly in mind." The United States Supreme Court ruled in 1893 that questions involving state practice and procedure were not substantial federal questions. *Lobber v. Schroeder,* 149 U.S. 580, 37 L. Ed 856 (1893). In this case the petitioner appealed to the court on the grounds that he had been denied due process of law because evidence had been admitted at the trial which constituted a variance, and that the suit was a suit at law which had been tried in an equity court. In regard to these two points, the United States Supreme Court made the following statement at 149 U.S. 585; 37 L. Ed 859, 860:

> If any Federal question existed in the case the attempt to raise it came too late, but we are of the opinion that no Federal question really exists in the case. The provisions of the statute complained of by the plaintiff in error are manifestly not in conflict with any provision of the Constitution of the United States, or of any law of Congress passed in pursuance thereof. The said statute relates to a matter of state practice alone, and proper construction of that statute, upon well settled principles, rested with the state courts. The questions as to whether the plaintiff's remedy was in law or in equity was a matter dependent entirely upon local law, and involved no Federal right whatever.
>
> We are, therefore, of opinion that the motion to dismiss for want of jurisdiction should be sustained, and it is accordingly so ordered.

More recent decisions of this Court have followed the same rule of law that matters of local practice and procedure do not constitute substantial federal questions. In *Honneyman v. Hanan,* 302 U.S. 375, 82 L. Ed 312

(1939), the petitioner had failed to assert his claim for a deficiency judgment in a foreclosure action at the proper time and his separate suit, filed later, was dismissed because of his failure to follow local practice and procedure. The Supreme Court ruled that the state court's decision dismissing the petitioner's claim, did not constitute a substantial federal question. In *Benz v. New York Thruway Authority*, 369 U.S. 147, 7 L.Ed 2d 634 (1962), the Court ruled that no substantial federal question was presented by a petition for writ of certiorari which requested review of the judgment of the New York Court of Appeals. This Court had ruled, under the rules of state practice, that an eminent domain suit could not be maintained in the New York State Supreme Court because jurisdiction over eminent domain litigation was vested exclusively in the New York Court of Claims.

*B. The Petitioner's allegation that the Mississippi Statutes for enlarging municipal boundaries are unconstitutional is not properly before the Court because it was not raised at any time in any court below, but, even if it had been raised, it would not present a substantial federal question.*

The petitioner on page 6 of his brief states that the Mississippi Supreme Court "had to construe Sections 3374-03 and 3374-10 of the Mississippi Code Annotated 1942, and therefore *sub silentio* determined the Statutes to be constitutional." This statement, though obviously it is not intended, is an admission that the petitioner failed to make any objection to the constitutionality of these statutes in the courts below. This point of course cannot be raised for the first time in the United States Supreme Court. The petitioner's failure to specifically

state, in his statement of the case, the specific stage in the trial court and in the appellate court in which he objected to the constitutionality of the aforementioned statutes, bars his raising this point at this time. Rule 23.1 (f) of the Rules of the Supreme Court of the United States. Obviously the petitioner could not specify when this point was raised in the courts below, because it was not raised.

Even if the point had been raised below, it would not constitute a substantial federal question. The statutes attacked are discussed on pages 10-19 of the petitioner's brief as being in violation of the due process clause of the Fourteenth Amendment to the United States Constitution. The thrust of the argument is that these statutes are unconstitutional because the affected citizens are not given the right to determine by popular referendum whether their territory will be annexed. Many years ago in *Hunter v. City of Pittsburg*, 207 U.S. 161, 52 L.Ed 151 (1907), the United States Supreme Court ruled against the petitioner's argument. In that case the Court was concerned with a Pennsylvania Act authorizing the consolidation of two cities upon a majority vote of the electors in the combined cities. A majority of the total votes cast in the two cities of Allegeheny and Pittsburg were in favor of a consolidation, but a majority of the votes cast in the smaller city of Allegeheny opposed it. The citizens of Allegeheny objected contending that the Pennsylvania Act unconstitutionally deprived them of their property without due process of law. The Supreme Court rejected these objections affirmed the state court stating at 207 U.S. 178, 179; 52 L.Ed 1559:

> . . . . We think the following principles have been established by them and have become settled doctrines

of this court, to be acted upon wherever they are applicable. Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be intrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters, nor any law conferring governmental powers or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of the Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destory the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the state is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the burden of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered

> or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the state and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.

The United States Supreme Court has not reconsidered this point since that time even though cases raising the same general point have been considered by this Court and review denied. *Hammonds v. City of Corpus Christi*, 343 F.2d 162 (5th Cir. 1965), *cert. denied*, 382 U.S. 837, 15 L.Ed 2d 80; *International Harvester Company v. Kansas City*, 308 F.2d 35 (10th Cir. 1963), *cert. denied* 371 U.S. 948, 9 L.Ed 2d 498.

The constitutionality of these same statutes has been considered and upheld by the Mississippi Supreme Court in *Ritchie v. City of Brookhaven*, 217 Miss. 860, 65 So. 2d 436 (1953). In 1966 certain objectors to an annexation proceeding by the City of Biloxi, Mississippi, after failing in the state trial court and the Supreme Court of the State of Mississippi, undertook an appeal from the final judgment of the Supreme Court of the State of Mississippi to the United States Supreme Court. The Supreme Court, on motion of the City of Biloxi, respondent, dismissed the appeal for want of a substantial federal question. *Bridges v. City of Biloxi*, 253 Miss. 812, 178 So. 2d 683; motion for stay overruled 253 Miss. 812, 180 So. 2d 154; motion to fix amount of supersedeas bond and to stay judgment and mandate overruled, 253 Miss. 812, 180 So. 2d 641 (1965); motion to dismiss granted 383 U.S. 574, 16 L.Ed 2d 106 (1966).

## II

## THERE IS NO SPECIAL AND IMPORTANT REASON FOR REVIEW OF THE MISSISSIPPI SUPREME COURT'S DECISION.

Rule 19.1 of the Rules of the Supreme Court of the United States specifically states that a review on writ of certiorari "is not a matter of right but of sound judicial discretion and will be granted only where there is special and important reasons therefor." The Mississippi Supreme Court has thoroughly reviewed the record in this case and has determined that the trial court's decision dismissing the petitioner's incorporation proceeding should be affirmed. The only alleged error, which was raised in the courts below and which has been presented to this Court, is one which involves state procedure and practice and does not raise a substantial federal question. The Mississippi municipal annexation statutes allow anyone who is adversely affected by either proceeding the right to file a protest with the Chancery Court of proper jurisdiction and fully state his grievances before the Court. If he should lose there, he can appeal with supersedeas to the Mississippi State Supreme Court by posting a bond in the amount of $500. Miss. Code Ann. §§ 21-1-31 through 21-1-37 (1972); formerly, Miss. Code Ann. §§ 3374-12 through 3374-14 (Supp. 1972).

## CONCLUSION

Wherefore, for the foregoing reasons the respondent most respectfully submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN E. STONE

And

L. ARNOLD PYLE

Attorneys for Respondent

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## CERTIFICATE

I, L. Arnold Pyle, one of the Attorneys for the Respondent herein, and a Member of the Bar of the Supreme Court of the United States, do hereby certify that on the 27 day of November, 1973, I served five printed copies of the foregoing Brief in Opposition to Petition for a Writ of Certiorari to the Supreme Court of the State of Mississippi on Honorable John Arthur Eaves, Eaves & Eaves, Bankers Trust Plaza Building, Jackson, Mississippi 39205, Attorney for Edward Martin Peusch, Petitioner, by United States mail, in a duly addressed envelope, postage prepaid.

L. Arnold Pyle

L. ARNOLD PYLE
Attorney for The City of Jackson,
Mississippi, Respondent